

SAINT REGIS MOHAWK TRIBAL APPELLATE COURT

Swamp)	
Appellant)	
)	DECISION AND ORDER
-V-)	
)	17-APP-0003
Estate of Swamp, Swamp,)	
And Swamp)	
Appellee)	

Jurisdiction

The case comes before the Court of Appeals on appeal from a decision purportedly issued by the Tribal Court on August 17, 2017. The Court of Appeals possesses "jurisdiction to hear all appeals from the Tribal Court."¹ Pursuant to the Saint Regis Mohawk Tribe's Rules of Civil Appellate Procedure, the Court of Appeals has the authority to hear an appeal from a final judgment of the tribal court. A final judgment is one that disposes of all issues in a case. This appeal, were it properly filed, is an appeal of a non-final decision of the tribal court and, as a matter of first impression for the Court of Appeals, bears some discussion.

Such an appeal is referred to as an interlocutory appeal.² After review of the Tribal Court and Judiciary Code and the Rules of Civil Appellate Procedure, the Court of Appeals has determined that we do have jurisdiction to hear an interlocutory appeal, when the furtherance of justice warrants such review. In such circumstances, leave to appeal is discretionary and will be granted if the Court determines that such an appeal will:

- 1) Materially advance the termination of the litigation or clarify further proceedings in the litigation;
- 2) Protect the petitioner from substantial or irreparable injury; or
- 3) Clarify an issue of general importance in the administration of justice.

The filing of an interlocutory appeal will automatically stay all proceedings. Denial of the appeal will dissolve any stay, though any issue raised before the Tribal Court through interlocutory appeal, and not resolved by the Court of Appeals at that time shall be preserved by either party as an issue for appeal of the final judgment or order. If the appeal is accepted by the Court of Appeals, the Rules of Civil Appellate Procedure shall apply.

¹ Saint Regis Mohawk Tribal Court and Judiciary Code, Section V. 3. (Amended May 8, 2012).

² An interlocutory appeal is an appeal made regarding a single issue or decision reached by the original hearing body prior to their final decision of the hearing. The purpose of an interlocutory appeal is to resolve a specific issue or question of law which is necessary prior to the adjudication of the merits of the case at the original hearing body.

Procedural History

Appellant [REDACTED] Swamp filed a "Notice of Appeal", along with a "20-Day Civil Summons" on September 13, 2017 with the Clerk of the SRMT Court of Appeals. Attorney for Appellee [REDACTED] Swamp filed an Answer on September 25, 2017, raising procedural objections, requesting dismissal of the "Notice of Appeal" and awarding of costs. Appellant has not filed proof of service for the Notice of Appeal nor attached the decision being appealed; nor has any request for the hearing transcript been made.

Analysis

A review of the filing, dated September 13, 2017, revealed several procedural deficiencies:

1) Appellant Failed to File a Proper Notice of Appeal

Section VIII, Rule 6 of the SRMT Rules of Civil Appellate Procedure states:

"Filing of the Notice of Appeal

All appeals shall originate by filing a Written Notice of Appeal with the Clerk of the Appellate Court. A certified copy of the judgment, order, or administrative decision being appealed, signed by the Judge or hearing officer and dated, must be attached to the Notice of Appeal, and the filing fee must be paid at the time of filing."

Appellant's filing, on September 13, 2017 did not include a copy of the decision being appealed, nor has one been filed with the Court in the interim.

2) Proof of Service Not Filed

The SRMT Rules of Civil Appellate Procedure, Section V (B)³ requires that a party filing an appeal serve the opposing party on or before filing the Notice of Appeal. Section V (C) of the same Rules requires the proof of service be filed *with* the Notice of Appeal. No proof of service has been filed in this case.

3) Appellant Failed to Cause Timely Transmission of the Record

In addition to serving the Notice of Appeal on the opposing party and providing the Court proof of service, the SRMT Rules of Civil Appellate Procedure, Section XI (C) requires that the Appellate Court dismiss an appeal on its own motion in the event that Appellant fails to timely transmit the record on appeal.

³ Rules of Appellate Procedure, Section V states, in pertinent part:

B. Service of All Papers Required; Notice By the Court Manner of Service

Copies of all papers filed by any party shall be served by a party or person acting for him or her, who is over the age of eighteen (18), on all other parties to the appeal at or before the time of filing. This Rule shall not apply to the transcript filed pursuant to Section 10, Rule 8. Service may be personal or by mail. Personal service includes delivery of the copy to counsel, or a clerk, or other responsible person over the age of eighteen (18) at the office of counsel, or to any proper party. Service by mail is complete upon mailing. Service of copies of notice and papers that the Clerk of the Appellate Court must serve on parties to the appeal shall also be made in accordance with the foregoing.

C. Proof of Service

Papers presented for filing shall contain an acknowledgement of service by the person served, or proof of service in the form of a statement of the date and manner of service and of the name of the person served, signed by the person who made service. Proof of service may appear on or be annexed to the paper filed.

Appellant filed his appeal on September 13, 2017. The Appellant was required to order a transcript of the proceedings within ten (10) days after filing the Notice of Appeal. To date, no transcript has been ordered, or filed with the Court Clerk. The Appellant has neither requested an extension of time, nor exercised the alternatives to the filing of a transcript allowed under the SRMT Rules of Appellate Procedure.

Discussion

The Saint Regis Mohawk Tribe's Rules of Civil Appellate Procedure are written in such a way to allow flexibility on the part of the Court of Appeals when reviewing the procedural aspects of an Appeal. Section III Right of Appeal states, as follows:

Section III. Right of Appeal A. Any aggrieved party may appeal from a final judgment of the tribal court. A final judgment is one that disposes of all issues in the case. B. Failure to file an appeal within the time limits imposed by Rule 3 shall result in the dismissal of the appeal. C. Failure to follow any procedure required by these Rules, other than the timely filing of a notice of appeal, shall not affect the validity of the appeal, but is grounds only for such action as the appellate court deems appropriate, which may include dismissal of the appeal. D. Appeals may be considered by order of the appellate court upon its own motion, or upon motion of a party, or by stipulation of the parties to the several appeals.

Section IV provides additional guidance:


Section IV. Suspension of Rules. Except as provided in Section 6, Rule 4(b), the Appellate Court may, upon motion for good cause shown, suspend the requirements or provision of any of these Rules in a particular case, and may order proceedings accordingly within its discretion. *These Rules shall be liberally construed in the furtherance of justice.* (Emphasis added)

This Court understands its duty to apply that flexibility in the furtherance of justice, and so does not lightly dismiss appeals based solely on procedural grounds. In this instance, however, the Court of Appeals cannot discern from the filing the specific decision or aspect of the decision that is being appealed by the Appellant. Additionally, having not been provided with the record on appeal or a copy of the decision being appealed, we have no choice but to dismiss. Recognizing the difficulty that self-represented Appellants may have understanding complicated procedural rules, we deny the request to award costs in this matter and will work with the Saint Regis Mohawk Tribal Court to ensure that guidance is provided to Appellants regarding the filing of appeals in the future.

Order

For the reasons stated herein, this appeal is DISMISSED, without prejudice; court costs denied.

Signed by my hand this 8th day of January, 2018.


Michele Mitchell, Chief Appellate Judge
Saint Regis Mohawk Tribal Appellate Court

Karla General

Karla General, Associate Appellate Judge
Saint Regis Mohawk Tribal Appellate Court

Patricia Lenzi

Patricia Lenzi, Associate Appellate Judge
Saint Regis Mohawk Tribal Appellate Court